



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R05-OAR-2008-0138; EPA-R05-OAR-2011-0827; FRL-9397-01-R5]

**Air Plan Approval; Indiana, Ohio; Definition of Chemical Process
Plants Under State Prevention of Significant Deterioration**

Regulations and Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for Indiana and revisions to the Operating Permit Program for Ohio. The proposed revisions incorporate changes to the definition of "chemical process plants" under Indiana's Prevention of Significant Deterioration (PSD) regulations and under Ohio's operating permit program. EPA is also providing an opportunity for public comment on similar changes to the definition of "major stationary source" in Ohio's PSD regulations that were approved into the SIP on October 28, 2014. This opportunity is being provided because these revisions were not explicitly discussed in the corresponding Federal Register action. The changes to the state rules described below are approvable because they are consistent with EPA regulations governing state PSD and title V programs and will not interfere with any applicable requirement concerning attainment and reasonable

further progress (as defined in section 171 of the Clean Air Act (CAA)), or any other applicable requirement of the CAA.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2011-0827 (Indiana) or EPA-R05-OAR-2008-0138 (Ohio) at <https://www.regulations.gov>, or via email to damico.genevieve@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa->

dockets.

FOR FURTHER INFORMATION CONTACT: For information regarding Indiana's PSD permit program: Michael Langman, Physical Scientist, Air Permit Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6867, *langman.michael@epa.gov*. For information regarding Ohio's title V operating permit or PSD permit programs: Mari González, Environmental Engineer, Air Permit Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6175, *gonzalez.mari@epa.gov*. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. What is being addressed in this document?

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Prior to the 2007 Ethanol Rule

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I. What is being addressed in this document?

EPA is proposing to approve revisions to a SIP submission received from Indiana on September 21, 2011. EPA is also proposing to approve revisions to the Ohio Title V Operating Permit Program and providing an opportunity for the public to provide comments on related revisions to Ohio's PSD regulations that were approved on October 28, 2014 (79 FR 64119). These revisions address changes made to EPA regulations that are reflected in EPA's final rule entitled "Prevention of Significant Deterioration, Nonattainment New Source Review (NA NSR), and Title V: Treatment of Certain Ethanol Production Facilities Under the 'Major Emitting Facility' Definition" (hereinafter referred to as the "2007 Ethanol Rule") as published in the *Federal Register* on May 1, 2007 (72 FR 24059). The 2007 Ethanol Rule amended the PSD definition of "major stationary source" in the Federal PSD regulations (40 CFR 51.166 paragraphs (b)(1)(i)(a), (b)(1)(iii)(t) and (i)(1)(ii)(t)) to exclude certain ethanol facilities from the "chemical process plant" source category. In doing so, it established the PSD major source threshold for ethanol production facilities at 250 tons per year (tpy) rather than 100 tpy. The 2007 Ethanol Rule

also removes the requirement to include fugitive emissions when determining if an ethanol production facility is major for PSD and title V permitting.

On October 21, 2019, EPA responded to a petition for reconsideration of the 2007 Ethanol Rule, denying the petition with respect to the revisions of the PSD regulations reflected in that rule (as described in more detail below). EPA is now proposing to approve revisions to Indiana's SIP and Ohio's operating permit program that are based on a part of the 2007 Ethanol Rule.

II. Background.

A. PSD Permitting Thresholds for Chemical Process Plants Prior to the 2007 Ethanol Rule

Under the CAA, there are two potential thresholds for determining whether a source is a major emitting facility that is potentially subject to the construction permitting requirements under the PSD program. One threshold is 100 tpy per pollutant, and the other is 250 tpy per pollutant. Section 169(1) of the CAA lists twenty-eight source categories that qualify as major emitting facilities if their emissions exceed the 100 tpy threshold. If the source does not fall within one of twenty-eight source categories listed in section 169, then the 250 tpy threshold is applicable.

One of the source categories in the list of twenty-eight source categories to which the 100 tpy threshold applies is chemical process plants. Since the Standard Industrial

Classification (SIC) code for chemical process plants includes facilities primarily engaged in manufacturing ethanol fuel, the EPA and states had previously considered such facilities to be subject to the 100 tpy thresholds.

As a result of this classification, pursuant to the EPA regulations adopted under section 302(j) of the CAA, chemical process plants were also required to include fugitive emissions for determining the potential emissions of such sources. Thus, prior to promulgation of the 2007 Ethanol Rule, the classification of fuel and industrial ethanol facilities as chemical process plants had the effect of requiring these plants to include fugitive emissions of criteria pollutants when determining whether their emissions exceed the applicability thresholds for the PSD and non-attainment NSR permit programs.

B. Title V Permitting Thresholds for Chemical Process Plants Prior to the 2007 Ethanol Rule

The CAA also establishes requirements for determining applicability for the title V operating permit program. All title V major sources must obtain a title V permit. Section 501(2) of the CAA defines major source for the purposes of the title V program as a major source as defined by section 112 of the CAA or a major stationary source as defined in section 302 or part D of title I of the CAA. Under the general definition of "major stationary source" in section 302(j) of the CAA, the major source threshold for any air pollutant is 100 tons per year. Under the NSR requirements of Part D of title I of the

CAA, lower thresholds for major sources can apply dependent upon the pollutant and the severity of the nonattainment classification. Major source thresholds for hazardous air pollutants (HAP) under section 112 of the CAA are 10 tpy of a single HAP or 25 tpy for any combination of HAPs. A source with emissions that exceed one of these thresholds is required to obtain a title V operating permit.

Section 502 of the CAA and EPA regulations provide that sources that belong to one of 28 categories listed in 40 CFR 70.2 must include fugitive emissions in determining applicability. The list of 28 source categories may also be included in approved state operating permit regulations.

C. Ethanol Rule

On May 1, 2007, EPA published the 2007 Ethanol Rule in the *Federal Register* (72 FR 24060). This final rule amended the PSD and NA NSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the "chemical process plants" category under the regulatory definition of "major stationary source."

This change to the NSR regulations affected the threshold used to determine PSD applicability for these ethanol production facilities, clarifying that such facilities were subject to the 250 ton per year major source threshold. The 2007 Ethanol Rule also changed how fugitive emissions are considered for affected ethanol production facilities. Because they would no longer be considered as part of the "chemical process plants" category,

ethanol facilities would no longer be required to include fugitive emissions when determining major source status under PSD, NA NSR, and Title V.

D. Petitions for Review and Reconsideration of the 2007 Ethanol Rule

On July 2, 2007, the National Resources Defense Council (NRDC) petitioned the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) to review the 2007 Ethanol Rule. On that same day, EPA received a petition for administrative reconsideration and request for stay of the 2007 Ethanol Rule from NRDC. On March 27, 2008, the EPA denied NRDC's 2007 administrative petition for reconsideration.

On March 2, 2009, EPA received a second petition for reconsideration and a request for stay from NRDC. In 2009, NRDC also filed a petition for judicial review challenging EPA's March 27, 2008, denial of NRDC's 2007 administrative petition in the D.C. Circuit. This challenge was consolidated with NRDC's challenge to the 2007 Ethanol Rule. In August of 2009, the D.C. Circuit granted a joint motion to hold the case in abeyance, and the case has remained in abeyance.

On October 21, 2019, EPA partially granted and partially denied NRDC's 2009 administrative petition for reconsideration. Specifically, EPA granted the request for reconsideration with regard to NRDC's claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 antibacksliding requirements for nonattainment areas.

III. What revisions to the Indiana SIP is EPA proposing to approve?

On September 21, 2011, EPA received a request from Indiana to revise its SIP. More specifically, Indiana requested EPA to approve its PSD rules at 326 Indiana Administrative Code (IAC) 2-2-1 and NA NSR program rules at 326 IAC 2-3-2 to exclude ethanol production facilities that produce ethanol by natural fermentation from the chemical process plant source category.

In this action, EPA is proposing to approve the revisions to Indiana's PSD program at 326 IAC 2-2-1 related to the 2007 Ethanol Rule. EPA is taking no action at this time on Indiana's request to revise its NA NSR program at 326 IAC 2-3-2. Although Indiana also amended its Title V program at 326 IAC 2-7, EPA is not taking action with respect to Indiana's Title V operating permit program because Indiana did not request such a revision.

Pursuant to 40 CFR part 51 appendix V section 1.2, Indiana's September 2011 SIP submission was deemed complete by operation of law on March 21, 2012, six months after receipt of the request. The submission includes a formal signed and dated letter requesting approval of the revision to Indiana's PSD rules, a copy of the actual regulation, evidence showing that the state followed all procedural requirements, evidence that public notice was given of the proposed change, and certification that public hearings were held. IDEM adopted the revised PSD rules on May 4, 2011, after receiving no comments

during the public comment period. The revised PSD rules became effective on August 20, 2011.

The state rule submitted for approval revised the PSD definition of "major stationary source" at 326 IAC 2-2-1(ff) to exclude certain ethanol production facilities that produce ethanol by natural fermentation from the chemical process plant source category. As a result of this revision, an ethanol production facility is subject to the 250 tpy PSD major stationary source threshold and is no longer required to consider fugitive emissions when determining its PSD major stationary source applicability. The ethanol production plants excluded from the chemical process plant source category at 326 IAC 2-2-1(ff) are identified by NAICS codes - these codes are the same as those identified in the 2007 Ethanol Rule and as identified at 40 CFR 51.166(b)(1)(i)(a).

EPA is proposing to approve the 2011 changes to 326 IAC 2-2-1(ff) into the Indiana SIP. Because sources in NAICS codes 325193 and 312140 that produce ethanol by natural fermentation are being excluded from the chemical process plant source category, EPA has determined that the requested changes to Indiana's PSD rules are consistent with the current PSD requirements at 40 CFR 51.166. 40 CFR 51.166(b)(1)(i)(a) excludes ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140 from the chemical process plant source category.

EPA has determined that the proposed revision will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA as required by section 110(1) of the CAA. Our determination is based on an analysis of Indiana's ethanol production trends, existing ethanol production permit requirements and locations with respect to ambient air monitoring, Indiana's statewide emissions inventory, Indiana's air quality design value trends, and representative photochemical modeling results for ozone and secondary fine particulate (PM_{2.5}) formation. Our analysis is included in the docket for this rulemaking.

Our analysis shows that Indiana's existing ethanol production facilities contribute 2% or less of each criteria pollutant when compared to statewide facility emissions. Indiana's total ethanol production has increased since 2007 but the state's air quality has steadily improved in general. Photochemical modeling of hypothetical sources representative of ethanol production facilities shows that ozone formation as a result of oxides of nitrogen (NO_x) and volatile organic compounds (VOC) emissions and secondary PM_{2.5} formation as a result of NO_x and sulfur dioxide (SO₂) emissions will not themselves cause or contribute to a violation of the ozone or PM_{2.5} National Ambient Air Quality Standard (NAAQS). In addition, the applicability of Federal and state requirements to ethanol production facilities in Indiana, such as New Source

Performance Standards at 40 CFR part 60 and National Emission Standards for Hazardous Air Pollutants at 40 CFR parts 61 and 63, will remain unaffected by this action.

IV. What revisions are being proposed by EPA in Ohio?

On February 7, 2008, EPA received a request from Ohio EPA to revise its SIP. This submittal included changes to the definition of "major stationary source" under Ohio Administrative Code (OAC) chapters 3745-31-01 and 3745-77-01, which incorporate into Ohio regulations the changes EPA made to Federal PSD and title V regulations in the 2007 Ethanol Rule. The changes to the definition of "major stationary source" in the PSD regulations in OAC chapter 3745-31-01 were approved into the SIP on October 28, 2014, but these changes were not explicitly discussed in the final rulemaking action that was published in the *Federal Register* (79 FR 64119). Therefore, the technical support document (TSD) that is available as part of this docket was developed to demonstrate that the changes which were approved into Ohio's SIP in 2014 related to the Ethanol Rule and the corresponding title V revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement. In this action, EPA is proposing to approve the title V changes in OAC 3745-77-01 relating to the 2007 Ethanol Rule and providing an opportunity for public comment on those changes, as well as the changes to the PSD program in OAC 3745-

31-01 relating to the 2007 Ethanol Rule that were approved into Ohio's SIP in 2014.

The changes to the PSD program that EPA approved in 2014 are revisions under the definition of "major stationary source" for stationary sources located in an attainment area that emit or have the potential to emit 100 tpy or more of any regulated NSR pollutant. Ethanol facilities that produce ethanol through natural fermentation were excluded from the definition of "chemical process plants."

EPA has determined that these changes are consistent with the current PSD requirements at 40 CFR 51.166 and that the 2014 revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. This determination is based on EPA's 110(1) analysis provided in the accompanying TSD for Ohio which includes ethanol production trends in the state, an analysis of air quality design value trends, an examination of Ohio's statewide emissions inventory, photochemical modeling for ozone and secondary PM_{2.5} formation, maps of existing ethanol facilities and ambient air monitors, and existing ethanol facility permit requirements. The analysis demonstrates that emissions from ethanol production facilities account for less than 1.5% of total point source emissions for five criteria pollutants examined in Ohio. While ethanol production has steadily increased in Ohio since 2007, in general, air quality has improved throughout the state as demonstrated by the

downward trend in design values for criteria pollutants.

Photochemical modeling for ozone based on NO_x and VOC emissions and secondary PM_{2.5} formation based on NO_x and SO₂ emissions from hypothetical ethanol sources demonstrates that that new ethanol sources and major modifications at existing sources would not likely cause a violation of the NAAQS. The analysis also includes a discussion of existing Federal requirements that limit emissions to which Ohio's ethanol facilities are subject.

The regulations that EPA approved under the PSD program and is proposing to approve under Ohio's title V program adopt language that is the same as or consistent with the language of EPA's 2007 Ethanol Rule. The state regulations that EPA is proposing to approve under the title V program similarly exclude production facilities that produce ethanol by natural fermentation from the "chemical process plants" category. These revisions clarify that an ethanol facility need not include fugitive emissions when determining major source applicability under title V.

EPA is proposing to approve the revision to the Ohio title V Operating Permit Program under the definition of "Major source" for a major stationary source of air pollutants that directly emits or has the potential to emit 100 tpy or more of any pollutants. EPA has determined that these changes are consistent with the current requirements for title V under 40 CFR part 70.

Based on the 110(l) analysis provided in the Ohio TSD that is available as part of this docket, EPA concludes that the changes which were approved into Ohio's PSD SIP in 2014 related to the Ethanol Rule and the corresponding title V revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement.

V. What action is EPA taking?

EPA is proposing to approve revisions to the Indiana SIP in 40 CFR 52.770. EPA is also proposing to approve revisions to the Ohio title V Operating Permit Program in 40 CFR 70 appendix A, and providing an opportunity for public comment on the 2014 revisions to the Ohio PSD SIP in 40 CFR 52.1870 related to the 2007 Ethanol Rule. The revisions that EPA is proposing to approve change the definition of "major stationary source" under Indiana's PSD regulations and Ohio's Operating Permit Program. EPA is not taking action on changes related to NA NSR in this action. This action would approve changes to the state regulations that establish that the PSD applicability threshold for certain ethanol plants is 250 tpy and remove the requirement to include fugitive emissions when determining if an ethanol plant is subject to major source requirements under PSD and the title V Operating Permit Programs. EPA has determined that these revisions are consistent with EPA's PSD and title V regulations and that approval of these revisions is consistent

with the requirements of CAA section 110(1) and will not adversely impact air quality.

VI. Incorporation by Reference.

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference for Indiana rule 326 IAC 2-2-1(ff), effective August 20, 2011. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information).

VII. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission and state Title V program submissions that comply with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a); 42 U.S.C. 7661a(d); 40 CFR 70.1(c), 70.4(i). Thus, in reviewing SIP submissions and Title V program revision submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements

Dated: January 6, 2022.

Debra Shore,
Regional Administrator, Region 5.